

TITLE 326 AIR POLLUTION CONTROL BOARD

#98-264(APCB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from April 1, 2000, through May 1, 2000, on IDEM's draft rule language. IDEM received comments from the following parties:

General Electric Plastics (GEP)
Eli Lilly and Company (ELC)
American Electric Power (AEP)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Please identify the source for the changes listed under 326 IAC 2-1-1(w)(3) and (4) as the federal language under 40 CFR 51.166 and 40 CFR 52.21 don't appear to have the same wording. (AEP)

Response: IDEM believes that the commentor means to refer to 326 IAC 2-2-1(w)(3) and (4) and not 326 IAC 2-1-1(w)(3) and (4) and has responded accordingly. IDEM added the list under 326 IAC 2-2-1(w)(3) and (4) in a LSA Document #83-101 that printed as final in the June 1, 1984 Indiana Register. This list is part of the lead state implementation plan (SIP). There are no changes to the list at this time.

Comment: In a 1996 proposed Federal Register, U.S. EPA added ozone-depleting substances (ODS) to the list of pollutants with a specific significance level of 100 tons per year. Comments were submitted in response to the First Notice of Comment Period regarding this 1996 proposed Federal Register and IDEM did not adequately respond to that comment. IDEM is relying upon outdated guidance documents in amending this rule. The list of ozone depleting substances under 326 IAC 2-2-1(hh)(21) should be expanded to include all ozone-depleting substances instead of just the five CFCs listed in order to encourage switching to lower ozone depleting pollutants not necessarily listed when this rule was amended; 326 IAC 2-2-1(hh)(22) should also be deleted. (GEP)(ELC)

Response: The purpose of the rulemaking is to revise the existing rule to meet U.S. EPA requirements for approval into the Indiana SIP. The draft language mirrors Wisconsin's language that was approved by U.S. EPA in 1999 as an amendment to Wisconsin's SIP. In addition, provisions in 326 IAC 2-2-1(hh)(21) are being moved from 326 IAC 2-2-1(x) to mirror 40 CFR 51.166(b)(23)(ii) and 40 CFR 52.21(b)(23)(ii). IDEM will consider changing the language when U.S. EPA issues a final rule.

Comment: IDEM has proposed to insert the word “federally” before the word “enforceable” in the definitions in 326 IAC 2-2-1 of “allowable emissions”, “major modification”, “net emissions increase”, and “potential to emit.” Each instance “enforceable” pertains to a permit term or condition taken to limit potential to emit. The word “federally” should be removed because the limitation is not required. In a 1995 decision (Chemical Manufacturers Assn. vs U.S. EPA, D.C. Cir. 1995, No. 89-1514), the court vacated the federal enforceability requirement of the PTE definitions in the PSD and NSR rules. That means the requirement no longer exists and the term should be removed from the rule. (GEP)(ELC)

Response: The term federally enforceable is contained in the 1998 edition of 40 CFR 52.21 and 51.166 as a result of the Alabama Power Company vs Costle decision. U.S. EPA has not amended Title 40 of the Code of Federal Regulations as a result of the 1995 case as stated and has footnoted the proposed federal rule (July 23, 1996, 61 FR 38249) that they are not taking action at this time. For federal approvability, IDEM’s definitions must conform to U.S. EPA’s definitions. When U.S. EPA amends their definitions IDEM will consider amending its definitions to maintain consistency between state and federal definitions.

Comment: Under 326 IAC 2-2-5(c)(1), IDEM should update its reference to U.S. EPA’s Guidelines on Air Quality Models published in 1986 by changing the reference to 40 CFR Part 51, Appendix W where the document has been codified into federal regulations rather than amending the rule every time a supplement is issued. (GEP)

Response: IDEM agrees. The wording of 326 IAC 2-2-5(c)(1) has been clarified.

Comment: The limitation under 326 IAC 2-2-5(c)(2) that an air quality impact model must be deemed “inappropriate” in order to modify it or to use another model is overly restrictive and unnecessary. There may be other better models available not specified in the U.S. EPA Guidelines. Since the alternate model must be subject to public comment and approved by U.S. EPA prior to use, these are adequate protections without having to prove a model is “inappropriate.” (GEP)

Response: The wording under 326 IAC 2-2-5(c)(2) is taken directly from 40 CFR 51.166(l)(2), air quality models. If a source believes that a model is inappropriate, it may modify the model or substitute another model with written approval from U.S. EPA, after being subject to notice with opportunity for public comment under 40 CFR 51.02.

Comment: 326 IAC 2-2-16 provides that no concentration of a pollutant under 326 IAC 2-2 shall exceed the lowest of concentrations in the primary or secondary national ambient air quality standards but doesn’t specify at what location such a concentration should be determined. Determinations are usually made at receptor sites outside the boundaries of the plant site as confirmed by the federal definition of “ambient air.” Ambient air is not defined in the Indiana Code or the Indiana Administrative Code. A definition should be added to 326 IAC 1-2 that is identical to the federal definition, then 326 IAC 2-2-16 should be amended to clarify that the

concentrations referred to are those in ambient air.

In addition, the clarity and utility of the rule would be enhanced by including a reference to the rule where the national primary and secondary ambient air quality standards are located. (GEP)

Response: The wording is taken directly from 40 CFR 51.166. The intent of the rule amendments is to mirror the federal language in order to obtain federal approval of 326 IAC 2-2. Ambient air is not defined under 40 CFR 51.166 and any deviations from the federal definitions have to be demonstrated by the state to be at least as stringent as the federal definitions in all respects. The department will not add any definitions separate from those listed in 40 CFR 51.166 at this time. The national and secondary air quality standards are located at 40 CFR 50 and will be added to the rule language as requested.

Comment: The following typographical errors should be corrected:

Under 326 IAC 2-2-1(o), the fraction $1/3$ should be placed inside the parentheses, 326 IAC 2-2-1(hh)(23) should be revised to conform to the format of the preceding 22 subdivisions, and in 326 IAC 2-2-14(e), the heading for the table incorrectly includes the phrase “of Sulfur Dioxide” which should be moved to the table heading in 326 IAC 2-2-14(h). (GEP)

Response: IDEM agrees and the rule changes have been made.

Comment: One of the most difficult aspects of determining whether PSD applies to a project is a result of the definition of actual emissions at 326 IAC 2-2-1(b). According to this definition, unless an emissions unit has begun normal operations, the post-modification actual emissions is equal to the post-modification potential to emit. This past-actual-to-future-actual test complicates NSR applicability and forces many projects that result in no real increase in emissions to either undergo NSR or obtain time-consuming synthetic minor limits.

IDEM has alleviated this problem for electric utility steam generating units which should be expanded from electric utility steam generating units in 326 IAC 2-2-1(b)(3) and (4) to all emission source categories. In addition, the definition of “Representative actual annual emissions” under subsection (ff) should be revised to broaden the applicability beyond electric utilities.(ELC)

Response: The WEPCO case subject matter only included electric steam generating units and U.S. EPA has not broadened the applicability beyond these sources. At this time, IDEM cannot extend the applicability beyond U.S. EPA’s interpretation since we are seeking federal approval for this rule.

Comment: Under 326 IAC 2-2-1(w), definition of major stationary source, the term “chemical process plants” is too broad and ambiguous. The replacement terms for chemical process plants should focus on a specific category of chemical production facilities that have potentially large air emissions. IDEM and U.S. EPA’s definition of chemical process plants includes any source under the Standard Industrial Classification (SIC) Code Major Grouping 28 and includes 29 separate industry categories.

Many of the industries under the umbrella of SIC Code are not significant emission sources comparable to the other 25 listed source categories. This causes the PSD rules to apply to more sources than appropriate. (ELC)

Response: The suggested change would make the state rule less stringent than the federal rule since U.S. EPA defines major source using the two digit classification. The state rule must be at least as stringent as the federal rule for federal approvability.

Comment: The proposed definition of “significant” included proposed amendments that will make the Indiana definition match the July 23, 1996 proposed revisions to the U.S. EPA’s PSD rules but the Indiana rules retain significant emission rates for asbestos, beryllium, mercury, and vinyl chloride which should be deleted. (ELC)

Response: The list is taken from 40 CFR 51.166 which are the rules currently enforced by U.S. EPA. IDEM will consider amending the rules when U.S. EPA issues its final federal rule.

Comment: IDEM needs to include the definition of the terms “nonroad engine” and “nonroad vehicle” from U.S. EPA’s July 23, 1996 proposed Federal Register as excluded under the definition of stationary source. (ELC)

Response: IDEM will consider adding definitions of “nonroad engine” and “nonroad vehicle” if U.S. EPA includes definitions for these terms in the final federal rule.

Comment: The suggested amendments in 326 IAC 2-2 should be added to 326 IAC 2-3, nonattainment new source review rules, either in this rule making action or a future action. (ELC)

Response: The purpose of the amendments to 326 IAC 2-2 is to seek U.S. EPA approval of Indiana’s PSD rules. Amendments to 326 IAC 2-3 will be considered at a later date.